

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

IN THE MATTER OF THE APPLICATION OF BULLDOG COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8153-M1	AQB 21-31
JAYHAWK COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8152-M1	AQB 21-32
LONGHORN COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 8349-M2	AQB 21-33
COWBOY CDP (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7877-M1	AQB 21-34
WILDCAT COMPRESSOR STATION (XTO ENERGY) FOR AN AIR QUALITY PERMIT, NO. 7474-M2	AQB 21-35
ZIA HILLS CENTRAL FACILITY (CONOCOPHILLIPS) FOR AN AIR QUALITY PERMIT, NO. 7746-M8	AQB 21-36
WILLOW LAKE GAS PLANT (CRESTWOOD NEW MEXICO) FOR AN AIR QUALITY PERMIT, NO. 5142-M8	AQB 21-38
MAVERICK COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7565-M2	AQB 21-39
SPARTAN COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7681-M2	AQB 21-40
TIGER COMPRESSOR STATION (XTO) FOR AN AIR QUALITY PERMIT, NO. 7623-M2	AQB 21-41

CRESTWOOD NEW MEXICO PIPELINE LLC’S
CLOSING ARGUMENT AND PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Applicant Crestwood New Mexico Pipeline LLC (“Crestwood”), in accordance with the New Mexico Environment Improvement Board’s adjudicatory procedures, NMAC 20.1.2.401, hereby submits its closing argument and proposed findings of fact and conclusions of law.

WildEarth Guardians (“WEG”) was the only entity that filed comments on Crestwood’s application for modifications to its new source review permit (“Application”) and requested a public hearing (docketed as AQB 21-38).

The Hearing Officer held a remote public hearing via Zoom on October 25–26, 2021 for AQB 21-38 and other permit applications filed by XTO Energy, Inc. (“XTO”) and ConocoPhillips Company (“Conoco”), which were consolidated with AQB 21-38. *See generally* Transcript of Proceedings Oct. 25–26 (2021) (“Tr.”). During the Hearing, WEG conceded all but two arguments against approval of the Application and issuance of Draft Permit No. 5142M8 (the “Draft Permit”). In this Closing Argument, Crestwood focuses on WEG’s two remaining challenges to approval and issuance of Crestwood’s Draft Permit.

I. Standard of Review

Any person may submit written comments or request a public hearing regarding a draft construction permit. NMAC 20.2.72.206.A.(2). If a request for a public hearing is timely filed and the Secretary determines there is “significant public interest,” the New Mexico Environment Department (“NMED”) shall hold a public hearing “in the geographic area likely to be impacted by the source.” NMAC 20.2.72.206.C; *see* NMSA § 74-2-7.H. The Air Quality Control Act provides a permit may only be denied if the proposed modification: “(a) will not meet applicable standards, rules or requirements of the Air Quality Control Act or the federal act;

(b) will cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or
(c) will violate any other provision of the Air Quality Control Act or the federal act.” NMSA § 74-2-7.C.(1). NMED promulgated corresponding regulations at NMAC 20.2.72.208.

The applicant has the burden to prove a permit should be issued and the burden does not shift. NMAC 20.1.4.400.A.(1). “The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed.” *Id.* “Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” *Id.* “The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.” NMAC 20.1.4.400.A.(3). Therefore, Crestwood has the burden to prove its Draft Permit should be issued; NMED has the burden to rebut any challenged condition of the Draft Permit it has proposed; and WEG has the burden to prove any condition it challenges is inadequate, improper, or invalid by a preponderance of the evidence.

II. Summary of Argument

The Draft Permit must be issued because it fully complies with the New Mexico Air Quality Control Act (NMSA Chapter 74, Article 2), NMAC 20.2.72.203, and all applicable NMED policies and guidance. The Air Quality Control Act and NMED’s regulations provide narrow and limited grounds upon which a permit may be denied; none of which are satisfied in this instance. *See* NMSA § 74-2-7.C; NMAC 20.2.72.208. NMED may only deny a permit if it finds the permitted emissions, after controls, will not comply with the New Mexico Air Quality Control Act or its implementing regulations, or any federal air quality standard. NMAC

20.2.72.208(A), (B), (C), (F).¹ As demonstrated in the record, the Draft Permit complies with all applicable federal and state standards, statutes, regulations, policies, and guidance.

Although WEG raised ten arguments in its two comment letters against approval of Crestwood's Application, WEG admitted at the Hearing that NMED's written testimony resolved all but two of its concerns. WEG's remaining concerns are: (1) whether NMED complied with Executive Order 2005-056's directives regarding environmental justice; and (2) whether the startup, shutdown and malfunction and maintenance ("SSM/M") emissions limits are enforceable. WEG did not provide any evidence to support denial of the Draft Permit on these two grounds.

First, NMED complied with Executive Order No. 2005-056 by publicizing each notice of Crestwood's Application and the Hearing in both Spanish and English, and by providing Spanish translation during the Hearing. NMED also used the EPA EJSCREEN tool to collect relevant demographic and environmental data for a four-mile radius surrounding Crestwood's Willow Lake Facility, finding that operation under Crestwood's Draft Permit would not pose impacts to disproportionately affected communities or present any other environmental justice concerns.

Second, both NMED and Crestwood provided testimony that the SSM/M emissions limits in the Draft Permit comply with NMED regulations, guidance, and policies and are enforceable permit conditions. For example, the Draft Permit imposes limits on SSM/M emissions and requires Crestwood (i) to measure, monitor, and record SSM/M emissions, (ii)

¹ NMAC 20.2.72.208(D) and (E) provide grounds for denial that only apply sources categorized as "major" for the purpose of the Clean Air Act Prevention of Significant Deterioration ("PSD") program. The PSD program applies to major sources or major modifications in attainment areas including Eddy County, New Mexico. Crestwood's Facility is not a major source because the Facility does not, and will not, emit more than 250 tons per year of any pollutant regulated under the National Ambient Air Quality Standards or the New Mexico Ambient Air Quality Standards. Therefore, the Facility is a "minor" source for the purposes of the PSD program and will continue to be a "minor" source after the modifications in Draft Permit No. 5142M8. AR221. Because NMAC 20.2.72.208 (D) and (E) do not apply to minor PSD sources, those provisions cannot serve as grounds to deny issuance of Crestwood's Draft Permit.

report excess emissions, and (iii) operate in a manner that minimizes emissions, all of which are consistent with NMAC 20.2.7.109 and NMED's Implementation Guidance for Permitting SSM Emissions and Excess Emissions (June 2012).

Finally, unlike Crestwood and NMED, WEG did not produce a witness with sufficient scientific, engineering, economic, or other specialized qualifications necessary to present written or verbal technical testimony. *See* NMAC 20.1.4.7.A.(22). Rather, WEG's single witness offered only general, policy-based comments that should be given no greater weight than other public comments.

In sum, WEG did not produce any evidence, let alone a preponderance of evidence, that any Draft Permit condition is "inadequate, improper, or invalid" or that the Draft Permit should not be issued. *See* NMAC 20.1.4.400.A. Accordingly, Crestwood and NMED met their burdens of proof, WEG failed in its, and the record demonstrates that the Draft Permit must be issued.

III. Summary of Crestwood's Minor Source Permit Application to Modify the Willow Lake Facility

On February 19, 2021, Crestwood submitted the Application to modify its new source review ("NSR") permit for the Willow Lake Gas Plant (the "Facility") pursuant to NMAC 20.2.72.219.D(1)(a). Administrative Record ("AR") at 007. The Application requests to add the following equipment to the Facility: three compressor engines, a produced water/condensate tank, and a triethylene glycol dehydration unit and associated reboiler at the Willow Lake Compressor Station. AR039. This additional equipment will increase the gas gathering capacity of the Facility to accommodate increased production from upstream oil and natural gas producers. Exhibit Crestwood-11 at 4. Increasing Crestwood's gas gathering capacity will allow upstream producers to send more gas to the Facility in lieu of flaring or venting the gas in the field, thereby avoiding the carbon dioxide and methane emissions associated with wellhead

flaring and venting. *Id.* Therefore, increasing the gas gathering capacity of the Facility will have positive environmental benefits. *Id.*

The Application also seeks to revise some of the Facility's existing emission sources. Specifically, the Application requests to change formaldehyde emissions to account for higher catalyst control efficiency guarantees for seven of the existing compressor engines (i.e., cleaner engine exhaust); increase the volume of liquid throughput going through storage tanks and loaded into tank trucks; increase the volume of gas the Facility may need to control by flaring; and increase the estimate of fugitive components as a result of the additional equipment added. AR039. These changes will further reduce and better control emissions at the Facility.

With the Application, Crestwood submitted AERMOD air dispersion modeling prepared by Trinity Consultants for CO, NO₂, SO₂, H₂S, PM_{2.5}, and PM₁₀ to demonstrate compliance with the National Ambient Air Quality Standards ("NAAQS"),² as well as New Mexico Ambient Air Quality Standards ("NMAAQs")³ and PSD Increments.⁴ AR233–244. The AERMOD modeling demonstrated there will be no exceedances of any applicable NAAQS, NMAAQs, or PSD Increments.⁵ AR368.

NMED designated the Application administratively complete on March 18, 2021, and labeled it Permit No. 5142M8. AR345; Exhibit NMED-25 at 3. NMED published the Legal Notice and Preliminary Determination ("Notice") of the Application on March 20, 2021, and a revised Notice on April 22, 2021. AR361–363; Exhibit NMED-25 at 3. The March 20, 2021 Notice provided the required 30-day public comment period (NMAC 20.2.72.206.A(5)).

² See 40 C.F.R. § 50.

³ See NMAC 20.2.3.

⁴ See 40 C.F.R. § 52.21; NMAC 20.2.74.

⁵ A PSD Increment is the amount of pollution increase allowed in an area that is in attainment with the NAAQS. The purpose of PSD Increments is to prevent an increase in pollution large enough to cause an attainment area to become a non-attainment area. See EPA, Prevention of Significant Deterioration Basic Information, *available at*: <https://www.epa.gov/nsr/prevention-significant-deterioration-basic-information>.

AR356–360; Exhibit NMED-25 at 3. The April 22, 2021 Notice included an email address for submission of comments and provided an additional 30-day public comment period (commencing May 28, 2021) in response to a request from WEG. AR362; Exhibit NMED-25 at 3. In the Notices, NMED concluded the Facility would continue to meet the criteria to be classified as a PSD minor source after Crestwood makes the modifications requested and the Draft Permit is issued. AR358, 362. WEG filed a request for public hearing in a letter to NMED dated April 16, 2021, which NMED granted. AR500–503, 510–512.

On September 14, 2021, Crestwood revised portions of the Application to manage an unanticipated increase in condensate at the Facility. AR583–613. The increased condensate volume is the result of incoming third-party wellhead gas streams with higher than anticipated BTU content entering the Facility.⁶ Exhibit Crestwood-11 at 5–6.

Separately, Crestwood submitted an administrative revision to NMED on September 14, 2021. Exhibit NMED 25 at 4–5. This administrative revision requests that NMED authorize four electric powered pumps, which will be used to pump liquids from the produced water/condensate tanks at Willow Lake 1 and the Willow Lake Compressor Station into the Orla Express Pipeline. *See* Exhibit Crestwood-11 at 6.

These revisions resulted in a further decrease in emissions at the Facility by eliminating tank truck load venting to atmosphere and the control of tank truck vapors from Willow Lake 1 and Willow Lake Compressor Station storage tank offloading. *Id.* The Facility-wide potential-to-emit decreases from these revisions are 0.3 tons of NO_x per year, 0.5 tons of CO per year, and 14.4 tons of VOCs per year. *Id.*

⁶ Crestwood does not own the production wells.

NMED supported the requested revisions and incorporated them into the Draft Permit. NMED sent the revised Draft Permit to WEG on September 21, 2021, and posted it to the NMED website on September 22, 2021. Exhibit NMED 25 at 7. NMED posted the revised Draft Permit before the 30-day deadline to provide notice of the hearing in accordance with NMAC 20.1.2.205.

Because WEG requested a public hearing on the Application, the permit decision date was extended. *See* NMAC 20.2.72.207.C(1). The Hearing Officer combined Crestwood's Draft Permit hearing with permit hearings for XTO and Conoco. Crestwood may not begin any construction, modification, or installation requested in the Application until the Department issues Permit No. 5142M8.⁷

IV. Summary of WEG's Arguments Regarding Crestwood's Application and Effect of the Hearing Officer's Order on the Motion in Limine

WEG's Ten Arguments

WEG's two letters, dated April 16, 2021 and June 28, 2021,⁸ raised the following ten issues regarding Crestwood's Application:

1. Whether NMED's published public notice was deficient because it did not include an email address;
2. Whether the proposed modification will comply with Executive Order 2005-056;
3. Whether the proposed modification encompasses all point sources that are part of a "single source" for permitting purposes;
4. Whether Crestwood's air dispersion modeling ensures the Facility will not cause or contribute to violations of the NAAQS (focusing on ozone and nitrogen dioxide), including whether Eddy County is violating the 8-hour NAAQS for ozone;
5. How the proposed modification will comply with NMED's toxic air pollutant permitting requirements;

⁷ *See* NMAC 20.2.72.200.E.

⁸ AR500-503, 504-509

6. Whether the emissions limits, particularly SSM/M, are enforceable;
7. Whether the Application addresses emissions from gas-actuated pneumatic controllers;
8. Whether the Application should authorize the Facility to combust natural gas containing up to 5 grains for total sulfur per 100 dry standard cubic feet;
9. Whether the Application should allow quarterly monitoring of the circulation rate for glycol dehydrators; and
10. Whether Crestwood's air dispersion modeling results are accurate in reporting no increase in air pollutant concentrations from surrounding sources.

Exhibit Crestwood-10, Testimony of Adam Erenstein on Behalf of Crestwood New Mexico

Pipeline LLC, discusses in detail why none of these ten issues have merit.

At the Hearing, WEG dropped its challenge to Crestwood's Application on all grounds except Issues #2 and #6 above:⁹

Mr. Nykiel: "And the Department's response that you referred to, we received that two weeks ago when the parties filed their written direct testimony?"

Mr. Nichols: "Yes. That's correct."

Mr. Nykiel: "Did these responses help resolve some of Guardians' concerns or questions that it raised in its comments?"

Mr. Nichols: "Yes, they did. Yeah. And we were very appreciative that we finally got a response"

Mr. Nykiel: "Did it – did these substantive responses [from NMED] to Guardians' comments resolve all of the issues that we had raised with these 10 proposed permits?"

Mr. Nichols: "Not all the issues, but a number of issues."

Later, Mr. Nichols clarified that the only issues remaining to Crestwood's Application were Issues #2 and #6 (above).¹⁰

⁹ Tr. 315:6–20.

¹⁰ Later, Mr. Nichols clarified that WEG only had three remaining issues to address with any of the applications: "the adequacy of legal notice, the enforceability of SSM/M emission limits, and compliance with the Executive Order on Environmental Justice." *See* Tr. 315:24–25, 316:1–3. Mr. Nichols further stated that WEG's concern regarding "the adequacy of legal notice" did not apply to Crestwood's Facility. *See* Tr. 371:20–25, 372:1–2.

Prior to this concession, WEG did not provide any notice to any of the parties that nearly all of the issues had been resolved.¹¹ WEG's approach cost all parties substantial time and resources. Moreover, raising myriad complex, technical issues and then providing only a lay witness to testify about policy concerns forced the parties to prepare for hearing on each of the issues, only to find out, in Crestwood's case, WEG only had two concerns with its Draft Permit.

Motion in Limine

Prior to the start of the Hearing, the Hearing Officer granted a motion in limine filed by Crestwood, Conoco, and XTO.¹² The motion requested an order precluding WEG from offering any documents, testimony, or other evidence related to the status of the 8-hour ozone NAAQS in Eddy and Lea Counties and whether any of the proposed permitting actions will necessarily "cause or contribute" to a violation of the ozone NAAQS based on the current attainment status of the counties. The Hearing Officer issued a verbal order that precluded WEG from testifying regarding Issue #4, above.¹³ This ruling also removes NMAC 20.2.72.208(D)–(E) as potential grounds for denial of Crestwood's Application.

¹¹ Tr. 331:14–25, 332:2–8.

¹² Tr. 40:8–19.

¹³ See Tr. 31:18–25, 32:1–22 (Hearing Officer Chakalian speaking):

Now, we haven't even talked about Significant Impact Levels because that doesn't come into consideration until a PSD is in effect, and PSD is not for minor sources. Sources that emit below 250 tons per year of an ozone precursor are minor sources for purposes of the Board's PSD permitting regulations. Pursuant to EPA guidance, NMED guidance and the Board's permitting regulations, which we are using today, a permit applicant for a minor source is not required to make an individual demonstration of its impacts on ambient ozone concentrations.

So if a permit applicant to a minor source is not required to make an individual demonstration of its impact on ambient ozone concentrations, then I don't see how it's relevant to accept evidence to controvert that.

Not only that, but in order to – in order to – in order to answer your concerns or WildEarth Guardians' concerns about these impacts on ambient ozone concentration, we have to spend a bunch of time for the parties to provide evidence to say that, in fact, they don't exceed – cause or exceed, and that's not even part of the draft permit, because it's not part of the law.

V. Crestwood's Draft Permit Meets All Applicable Legal Requirements and Should Be Issued

Crestwood's Draft Permit must be issued because it fully complies with all state and federal requirements under NMAC 20.2.72. The Application package satisfied NMAC 20.2.72.203 and complied with the NMAC 20.2.72.206 public notice and participation requirements. The Draft Permit includes sufficient conditions to comply with state and federal air quality control standards, limit emissions, and utilize appropriate control technology consistent with NMAC 20.2.72.210. Crestwood has met its burden to prove its Draft Permit should be issued and WEG has not proven otherwise. With respect to the two issues WEG did not concede, WEG failed to show, by a preponderance of the evidence, that either would render issuance of the Draft Permit "inadequate, improper, or invalid." *See* NMAC 20.1.4.400.A.

A. WEG Provided Only Lay Testimony

As an initial matter, WEG's testimony should be given no more weight than a public comment. WEG presented one witness at the hearing: Jeremy Nichols. Mr. Nichols does not have any technical training that would qualify him to provide an expert opinion or technical testimony regarding air quality, oil and gas operations (including SSM/M), engineering, or environmental justice. NMAC 20.1.4.7.A.(22) defines "technical testimony" as "scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing."¹⁴ Mr. Nichols simply lacks sufficient background or training to

¹⁴ Tr. 333:17–25, 334:1–4, 343:16–25, 344:1–18. In contrast to Mr. Nichols, the technical experts that testified on behalf of Crestwood and NMED have qualifying and relevant technical training and experience. Moshe Wolfe, P.E., has a B.S. in chemical engineering and is a registered professional engineer by the Texas Board of Professional Engineers. Mr. Wolfe has eleven years of engineering experience, eight years of air quality permitting and compliance experience in the midstream sector, and is currently a Senior Environmental Engineer for Crestwood. Adam Erenstein has a Bachelor of Earth and Planetary Sciences and more than thirteen years of air quality permitting and compliance experience. Mr. Erenstein is a Principal Consultant at Trinity Consultants and has expertise in state air quality permitting and modeling, PSD permitting, Title V permitting, emissions inventories, and

offer specialized, technical testimony regarding Crestwood's Draft Permit. Further, Mr. Nichols does not have a law degree, is not a licensed attorney,¹⁵ and admitted he is not qualified to interpret regulations or otherwise offer legal testimony.¹⁶ Therefore, Mr. Nichols lacks the qualifications to offer legal testimony.

Mr. Nichols' testimony should be categorized as "general" testimony. *See* NMAC 20.1.4.300.B.(2). At the Hearing, Mr. Nichols agreed he did not have any specialized training that would elevate his testimony above lay testimony.¹⁷ To the extent WEG's testimony advances policy arguments, such policy arguments cannot serve as a basis to deny a draft permit and do not qualify as "technical testimony." *See* NMAC 2.2.72.208.¹⁸ As discussed next, the general testimony WEG provided on the two issues it did not concede at the Hearing failed to provide any evidence against issuing Crestwood's Draft Permit.

B. Crestwood met its burden to demonstrate the Draft Permit should be issued.

As the Applicant, Crestwood has the burden to prove the Draft Permit should be issued. Crestwood met that burden by submitting an Application and testimony showing the Application and Draft Permit complies with all requirements of NMAC 20.2.72.203.

compliance. Urshula Bajracharya, Permit Specialist in the Major Source – PSD Unit of the Permitting Section, Air Quality Bureau, provided extensive written testimony (Exhibit NMED-25) and oral testimony regarding the adequacy of Draft Permit No. 5142M8. Ms. Bajracharya has a Bachelor's Degree in Environmental Science and a Master's Degree in Earth Science. She has several years of experience in environmental consulting and working on environmental compliance for NMED, and two years of experience working in the Air Quality Bureau's Permitting Section.

¹⁵ Tr. 334:5–8.

¹⁶ *See* Tr. 322:10–22.

¹⁷ Tr. 343:25, 344:1–16.

¹⁸ As discussed in detail below, the only remaining basis for denial of a permit would be evidence (which does not exist) indicating the permit will not meet applicable regulations adopted pursuant to the Air Quality Control Act.

1. Crestwood's permit Application meets the requirements of New Mexico law.

Crestwood met its burden on this record to show the Application and Draft Permit meets all applicable legal requirements, including those under NMAC 20.2.72.203, which governs applications for construction permits or modifications thereof. Crestwood submitted its Application on NMED's forms, consistent with NMAC 20.2.72.203.A.(1). The following chart indicates which sections of the Application meet the associated NMAC 20.2.72.203.A requirements:

Regulatory Requirement within NMAC 20.2.72.203.A	Corresponding Section of Crestwood's Application
(2) State the applicant's name and address, together with the names and addresses of all owners or operators of the source, and the applicant's state of incorporation or principal registration to do business;	Section 1 – General Facility Information
(3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed, and estimate maximum potential emissions during malfunction, startup, shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401 NMAC this requirement only applies when the toxic air pollutant is emitted in such a manner that a permit is required under the provisions of 20.2.72.400 NMAC - 20.2.72.499 NMAC;	Universal Application Form (“UA”) 2; Section 6 – All Calculations; and Section 7 – Information Used to Determine Emissions
(4) Contain a regulatory compliance discussion demonstrating compliance with each applicable air quality regulation, ambient air quality standard, prevention of significant deterioration increment, and provision of 20.2.72.400 NMAC - 20.2.72.499 NMAC. The discussion must include an analysis, which may require use of US EPA-approved air dispersion model(s), to (1) demonstrate that emissions from routine operations will not violate any New Mexico or National Ambient Air Quality Standard or prevention of significant deterioration increment, and (2) if required by 20.2.72.400 NMAC - 20.2.72.499 NMAC, estimate ambient concentrations of toxic air pollutants.	Section 13 – Discussion Demonstrating Compliance with Each Applicable State & Federal Regulation; and Section 16 – Air Dispersion Modeling

(5) Provide a preliminary operational plan defining the measures to be taken to mitigate source emissions during malfunction, startup or shutdown;	Section 14 – Operational Plan to Mitigate Emissions
(6) Include a topographical map, at least as detailed as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey, showing the exact location and geographical coordinates of the proposed construction, modification or installation of the source;	Section 8 – Maps
(7) Include a process flow sheet, including a material balance, and a site diagram of all components and locations of emissions to the atmosphere of the facility which would be involved in routine operations and emissions;	Section 1-C – Facility Input Capacity & Production Rate; Section 2, Table 2-M – Materials Processed and Produced; Section 4 – Process Flow Sheet; and Section 5 – Plot Plan Drawn to Scale
(8) Include a full description, including all calculations of controlled and uncontrolled emissions and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;	Section 2, Table 2-C – Emission Control Equipment; and Section 6 – All Calculations
(9) Include a description of the equipment or methods proposed by the applicant to be used for emission measurement;	Section 6 – All Calculations
(10) State the maximum and standard operating schedules of the source after completion of construction, modification or installation or after permit revision in terms of which and how many hours per day, days per week, days per month and days per year;	Section 1-E – Proposed Operating Schedule; Section 10 – Written Description of the Routine Operations of the Facility; and Section 15 – Alternative Operating Scenarios
(11) Contain such other specifically identified relevant information as the department may reasonably require;	Crestwood submitted all specifically identified relevant information on NMED's UA1, UA2, UA3, and UA4
(12) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any;	Section 12 – Certification

(13) Contain payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted;	UA 1 – acknowledgements section includes check number for Crestwood’s payment enclosed with the Application
(14) Contain documentary proof of applicant’s public notice, if applicable, as specified in Subsection B of 20.2.72.203 NMAC; and	Section 9 – Proof of Public Notice
(15) At the sole discretion of the applicant, contain a request for accelerated review of the application.	Not applicable

Because the Application satisfied NMAC 20.2.72.203, NMED deemed it administratively complete on March 18, 2021.¹⁹

2. Even if WEG did not concede all but two of its arguments, Crestwood met its burden to demonstrate the Draft Permit should be issued.

Even if the Hearing Officer determines that WEG did not concede all but two of the arguments raised in its letters, Crestwood met its burden to demonstrate the Draft Permit should be issued. Crestwood’s record support on these issues is contained in its pre-filed written testimony.²⁰

C. WEG failed to meet its burden on the two issues it did not concede.

WEG failed to meet its burden to prove the Draft Permit should not be issued. As the protestant, WEG had the burden to affirmatively prove that any challenged permit condition was “inadequate, improper, or invalid” by a preponderance of the evidence. NMAC 20.1.4.400.A.1. WEG failed to meet its burden.

¹⁹ NMAC 20.2.72.207 requires NMED to determine whether an application is administratively complete within thirty days of receiving the application.

²⁰ See Exhibit Crestwood-10 for detailed responses to each argument WEG raised in its comment letters. Exhibit Crestwood-10 also contains discussion regarding Draft Permit No. 5142M8’s compliance with the ozone National Ambient Air Quality Standards, the relevant modeling, and the attainment status of Eddy County even though the Hearing Officer ruled those issues were irrelevant and requested that all parties submit redacted versions of their written testimonies.

1. A proper environmental justice review was performed.

Although not a codified regulatory requirement, NMED appropriately addressed environmental justice concerns as directed by Executive Order 2005-056 – “Environmental Justice Executive Order.” The Executive Order directs cabinet level departments, including NMED, to “provide meaningful opportunities for involvement of all people regardless of race, color, ethnicity, religion, income, or education level.” To increase involvement, the Executive Order directs cabinet level departments to disseminate all public information in Spanish and English. The Executive Order also requires cabinet level departments to “utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities.”

NMED satisfied the Executive Order’s instructions in this Application. First, NMED disseminated all notices related to the Application and the Hearing in both English and Spanish.²¹ Additionally, Spanish and American sign language interpreters translated the entire Hearing. Second, NMED used the U.S. Environmental Protection Agency’s (“EPA”) EJSCREEN tool in its decision-making process for the Application.²² In written testimony, NMED explained its approach under Policy 07-13:²³

For each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is a 4-mile circle around the facility except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as a number of households, per capita income, percent of Linguistically Isolated Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed.

²¹ Exhibit NMED-19 at 2–5, Exhibit NMED-44 at 2–5.

²² Exhibit NMED-21 at 14.

²³ Exhibit NMED-21 at 14.

NMED's use of EPA EJSCREEN satisfied the Executive Order.

As Mr. Wolfe explained, the "nearest occupied residential structure is 1,750 meters (more than a mile) to the north of [Crestwood's] Facility, and the community of Malaga, NM is even further away. Malaga is sparsely populated and home to only 114 residents."²⁴ Based on this data, both Crestwood and NMED correctly concluded the requested modifications to the Facility will not impose any impacts on any community, and the terms and conditions of the Draft Permit ensure the Facility will operate according to applicable federal and state requirements.

Even if these measures had not been taken, Executive Order 2005-056 does not "create a private right of action to enforce any provision of th[e] Order" and, therefore, cannot be a basis, in and of itself, for denial. NMAC 20.2.72.208 does not authorize denial of an application because of environmental justice concerns. Even if a New Mexico statute or regulation provided a basis for denial due to environmental justice concerns (and neither statutes nor regulations do), WEG did not provide any testimony or other evidence to indicate that the Facility would negatively impact a marginalized community or that NMED improperly applied EPA EJSCREEN or that use of the EPA EJSCREEN was not appropriate for the Application.

Therefore, the Hearing Officer should find that NMED performed a proper environmental justice review showing the Draft Permit would not negatively impact any marginalized community, and that WEG did not provide any evidence, let alone a preponderance, that the Draft Permit should or could be denied on environmental justice grounds.

2. Crestwood's permit will impose legally and practicably enforceable limits on SSM/M consistent with New Mexico law and guidance.

NMED imposed appropriate limits on SSM/M emissions in the Draft Permit and NMED has the authority to legally and practicably enforce those permit limits. NMAC 20.2.72.203.A(3)

²⁴ Exhibit Crestwood-11 at 2.

requires each application to include “all reasonably quantifiable emissions that fall into [the SSM category]” and states “[e]missions from activities in these categories that do not exceed the permitted normal emission rates for a facility do not need to be permitted separately.”²⁵ NMED explains in its permitting guidance that there is “no limit on the quantity of SSM emissions that can be permitted, provided they are routine and predictable, and included in applicable air dispersion modeling that demonstrates compliance with State and Federal ambient air quality standards.”²⁶

SSM/M conditions are enforceable just like any other permit condition. The New Mexico Air Quality Control Act states that “[a]ny conditions placed upon a permit by the department or the local agency shall be enforceable to the same extent as a regulation of its board.” NMSA § 74-2-7.F. It provides for enforcement “on the basis of any information . . . that a person has violated or is violating a requirement or prohibition of the Air Quality Control Act, a regulation promulgated pursuant to that act or a condition of a permit issued under that act” *Id.* § 74-2-12.A. NMED’s regulations provide the same enforcement authority for construction permits. *See* NMAC 20.2.72.210.D (“Any term or condition imposed by the department on a permit or permit revision is enforceable to the same extent as a regulation of the board”).

Crestwood’s Draft Permit contains several conditions to address SSM/M emissions. Permit Condition A107 limits SSM/M emissions for specific sources and imposes annual maximum emissions limits for volatile organic compounds, hazardous air pollutants, and hydrogen sulfide emissions from all sources. AR423–424. This condition also requires monitoring, recordkeeping, and reporting any excess emissions events in accordance with NMAC 20.2.7.110. AR424–428. Condition B107 requires Crestwood to implement a plan to

²⁵ Exhibit Crestwood-9 at 2.

²⁶ *Id.* at 2 (emphasis added).

minimize SSM emissions. AR448. Conditions B107 and B110 require extensive recordkeeping regarding SSM/M emissions. AR448, 452–454. As required by NMAC 20.2.7.109, Condition B101 requires Crestwood to minimize emissions “in a manner consistent with good air pollutant control practices.” AR446. Collectively, these impose legally and practicably enforceable limits on SSM/M emissions at the Facility.

WEG expressed concern that SSM/M limits could not be enforced because the vented gas from facilities, including Crestwood’s Facility, could not be measured.²⁷ This concern is not valid, as Crestwood explained in its written testimony.²⁸ This was confirmed by Mr. James Nellessen, Supervisor – PSD Unit, who testified that the vented gas can be measured and the measurement method depends on the type of event.²⁹ For planned maintenance and malfunction events that require depressurizing, “[t]he volume of vented gas is calculated based on the volumes contained within the equipment being depressurized, including the compressors and associated piping.”³⁰ Using an inlet gas analysis, operators can determine the percent of vented gas that is VOCs.³¹ For pigging blowdowns, operators calculate the amount of gas in the line serviced and then determine the percent of that gas that is VOCs.³² WEG chose to not cross examine Mr. Nellessen or any Crestwood witness about SSM/M at the Facility at the hearing.

The Draft Permit imposes legally and practicably enforceable limits on SSM/M emissions. WEG provided no evidence that any SSM/M Draft Permit condition is “inadequate, improper, or invalid.” Consequently, the Hearing Officer should find that WEG did not prove, by

²⁷ Tr. 172:4–8.

²⁸ Exhibit Crestwood-10 at 16.

²⁹ Tr. 172:9–13.

³⁰ Tr. 172:14–20.

³¹ Tr. 172:21–25.

³² Tr. 173:1–6.

a preponderance of the evidence, that the Draft Permit should be denied due to unenforceable SSM/M emissions limits.

V. Conclusion

The evidence demonstrates that Crestwood's Application satisfied NMAC 20.2.72.203 and Draft Permit No. 5142M8 contains appropriate terms and conditions to ensure compliance with all state and federal air quality standards. The evidence also demonstrates that NMED complied with each relevant requirement in NMAC 20.2.72 while processing the Application and preparing Draft Permit No. 5142M8. In particular, NMED's procedures regarding public notice and use of the EPA EJSCREEN tool appropriately assessed and addressed environmental justice concerns as directed by Executive Order No. 2005-056. NMED also imposed legally and practicably enforceable permit conditions on Facility SSM/M emissions. WEG presented no evidence at the Hearing to support denial of the Application pursuant to NMAC 20.2.72.208. Lastly, WEG did not meet its burden to show by a preponderance of the evidence that any Draft Permit No. 5142M8 condition is "inadequate, improper, or invalid" as required by NMAC 20.1.4.400.A.(1). For these reasons, Draft Permit No. 5142M8 must be issued.

Respectfully submitted,

**BROWNSTEIN HYATT FARBER SCHRECK,
LLP**

s/Eric P. Waeckerlin
Courtney M. Shephard, #150290
Eric P. Waeckerlin (*pro hac vice*)
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Tel: (303) 223-1100
Fax: (303) 223-1111
cshephard@bhfs.com
ewaeckerlin@bhfs.com

**ATTORNEYS FOR CRESTWOOD NEW
MEXICO PIPELINE LLC**

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2021, a true and correct copy of **Crestwood New Mexico Pipeline LLC's Closing Argument and Proposed Findings of Fact and Conclusions of Law** was served via electronic mail to the following:

Jeremy Nichols
WildEarth Guardians
jnichols@wildearthguardians.org

Matt Nykiel
WildEarth Guardians
mnykiel@wildearthguardians.org

Madai Corral, Paralegal/Hearing Clerk
Pamela Jones, Hearing Clerk
New Mexico Environment Department
1190 St. Francis Drive
P.O. Box 5469
Santa Fe, New Mexico 87502
(505) 660-4305
Pamela.Jones@state.nm.us
Madai.Corral@state.nm.us

Chris Vigil, Assistant General Counsel
Lara Katz, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
christopherj.vigil@state.nm.us
lara.katz@state.nm.us

s/ Patricia Davis
Paralegal
Brownstein Hyatt Farber Schreck, LLP

CRESTWOOD NEW MEXICO PIPELINE LLC'S PROPOSED FINDINGS OF FACT

Application to Modify the Willow Lake Facility New Source Review Permit

1. Crestwood New Mexico Pipeline LLC (“Crestwood”) owns and operates the Willow Lake Facility located in Eddy County, New Mexico. AR007–008; Exhibit Crestwood-11 at 2.
2. The U.S. Environmental Protection Agency (“EPA”) has designated Eddy County, New Mexico as attainment with respect to each criteria pollutant, including for the 8-Hour Ozone National Ambient Air Quality Standard (“NAAQS”). Exhibit NMED-1 at 1–2.
3. The Willow Lake Facility is a gas plant that, depending on its operating mode, compresses, processes, and dehydrates natural gas delivered from oil and gas producers or simply compresses and dehydrates the gas. Exhibit Crestwood-11 at 2–3.
4. The Willow Lake Facility currently operates under new source review (“NSR”) Permit No. 5142M7. AR007.
5. On February 19, 2021, Crestwood filed an application to modify its NSR permit pursuant to NMAC 20.2.72.219.D(1)(a) (the “Application”). AR007.
6. The Application requests to add compressor engines, a produced water/condensate tank, and a triethylene glycol dehydration unit and associated reboiler at the Willow Lake Compressor Station. AR313.
7. The Application also requests to revise formaldehyde emissions because of higher catalyst control efficiency guarantees for seven of the existing compressor engines; increase the volume of liquid throughput going through storage tanks and loaded into tank trucks; increase the volume of gas the Willow Lake Facility may need to control by flaring; and increase the estimate of fugitive components as a result of the additional equipment added. AR313.
8. This additional equipment is necessary to increase the gas gathering capacity of the Willow Lake Facility to accommodate increased production from oil and natural gas producers and avoid venting and flaring gas in the field. Exhibit Crestwood-11 at 4.
9. The Willow Lake Facility, including the modifications requested in the Application, qualifies as a prevention of significant deterioration (“PSD”) “minor” source under New Mexico’s pre-construction regulations because it is located in an attainment area and its total emissions do not exceed 250 tons per year. AR327; *see* NMAC 20.2.72.200.
10. Beginning on May 21, 2021, the Willow Lake Facility began operating as a Title V “major” source because nitrogen oxide (NO) and carbon monoxide (CO) emissions exceeded 100 tons per year once Crestwood added and began operating the sources authorized by current Permit No. 5142M7. Exhibit Crestwood-11 at 4; *see* NMAC 20.2.70.
11. Consistent with NMAC 20.2.70.300.B, Crestwood will submit a Title V permit application for the Willow Lake Facility by May 20, 2022. Exhibit Crestwood-11 at 4.

12. The Application complied with NMAC 20.2.72.203. The following list indicates which section(s) of the Application complied with the associated NMAC 20.2.72.203 requirement:

- a. NMAC 20.2.72.203.A.(2): Section 1 – General Facility Information
- b. NMAC 20.2.72.203.A.(3): Universal Application Form (“UA”) 2; Section 6 – All Calculations; and Section 7 – Information Used to Determine Emissions
- c. NMAC 20.2.72.203.A.(4): Section 13 – Discussion Demonstrating Compliance with Each Applicable State & Federal Regulation; and Section 16 – Air Dispersion Modeling
- d. NMAC 20.2.72.203.A.(5): Section 14 – Operational Plan to Mitigate Emissions
- e. NMAC 20.2.72.203.A.(6): Section 8 – Maps
- f. NMAC 20.2.72.203.A.(7): Section 1-C – Facility Input Capacity & Production Rate; Section 2, Table 2-M – Materials Processed and Produced; Section 4 – Process Flow Sheet; and Section 5 – Plot Plan Drawn to Scale
- g. NMAC 20.2.72.203.A.(8): Section 2, Table 2-C – Emission Control Equipment; and Section 6 – All Calculations
- h. NMAC 20.2.72.203.A.(9): Section 6 – All Calculations
- i. NMAC 20.2.72.203.A.(10): Section 1-E – Proposed Operating Schedule; Section 10 – Written Description of the Routine Operations of the Facility; and Section 15 – Alternative Operating Scenarios
- j. NMAC 20.2.72.203.A.(11): Crestwood submitted all specifically identified relevant information on UA1, UA2, UA3, and UA4
- k. NMAC 20.2.72.203.A.(12): Section 22 – Certification
- l. NMAC 20.2.72.203.A.(13): UA 1
- m. NMAC 20.2.72.203.A.(14): Section 9 – Proof of Public Notice
- n. NMAC 20.2.72.203.A.(15): Not applicable

13. On March 18, 2021, New Mexico Environment Department (“NMED”) designated the Application administratively complete and labeled it Draft Permit No. 5142M8 (the “Draft Permit”). AR345.

14. On March 20, 2021, NMED published the Legal Notice and Preliminary Determination of the Application on the NMED website and in the *Carlsbad Current Argus*. AR356–360. The Legal Notice provided a 30-day public comment period. *Id.*

15. WildEarth Guardians (“WEG”) submitted a letter regarding the Application to NMED dated April 16, 2021. AR500–503. The letter requested that NMED release its full analysis and review of the application, release the draft permit, publish notice of the Application again with an email address for comment submissions and provide for a second 30-day public comment period on the draft permit, and analysis, and provide a public hearing. The letter expressed concern with the legal notice for the Application and asked several questions about whether the Draft Permit would comply with state and federal air quality regulations.

16. On April 22, 2021, NMED published a revised public notice in the *Carlsbad Current Argus* that included an email address for submission of public comments. AR361–363.

17. On May 28, 2021, NMED mailed a copy of the Draft Permit and the accompanying analysis to WEG. Exhibit NMED-25 at 6.

18. WEG submitted a second letter regarding the Application to NMED dated June 28, 2021. AR504–509. WEG again requested a public hearing, expressed concerns about public notice and participation, and whether the draft permit would comply with state and federal air quality regulations. WEG also raised the issue of enforceability of startup, shutdown, and maintenance and malfunction limits and environmental justice concerns.

19. NMED’s Air Dispersion Modeling Summary for the Application concluded:

This modeling analysis demonstrates that operation of the facility described in this report neither causes nor contributes to any exceedances of applicable air quality standards. The standards relevant at this facility are NAAQS for CO, NO₂, PM₁₀, PM_{2.5}, and SO₂; NMAAQs for CO, H₂S, NO₂, and SO₂; and Class I and Class II PSD increments for NO₂, PM₁₀, PM_{2.5}, and SO₂.

AR368.

20. NMED further concluded: “[t]he permit can be issued based on this modeling analysis.” AR368.

Procedural Timeline

21. On August 6, 2021, the Hearing Officer issued an Order Amending Scheduling Order to specify the Hearing beginning on October 25, 2021, would be held virtually due to the COVID-19 pandemic.

22. The Notice of Hearing was posted to the NMED website under “Docketed Matters” on September 21, 2021, in both English and Spanish. Exhibit NMED-19 at 2.

23. The Notice of Hearing was published in English and Spanish in the *Carlsbad Current Argus* on September 22, 2021, the *Albuquerque Journal* on September 23, 2021, and the *Hobbs Daily News-Sun* on September 24, 2021. Exhibit NMED-19 at 2–3.

24. On September 22, 2021, NMED emailed the Notice of Hearing to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of New Mexico

Land Office, the U.S. Environmental Protection Agency, the State of Texas, Carlsbad Caverns National Park, Carlsbad Department of Development, and to Jeremy Nichols and Matthew Nykiel at WEG. Exhibit NMED-19 at 3–4.

25. On October 5, 2021, NMED sent public service announcements regarding the Notice of Hearing to Carlsbad radio, KZOR FM radio in Hobbs, NM, and the KENW New Mexico PBS station serving Lea and Eddy Counties. Exhibit NMED-19 at 5.

26. On October 12, 2021, XTO, Crestwood, and Conoco filed a Motion in Limine requesting an order precluding WEG from offering any documents, testimony, or other evidence, in the above captioned matters, related to 8-hour ozone NAAQS in Eddy and Lea Counties, or that any of the proposed permitting actions will necessarily “cause or contribute” to a violation of the ozone NAAQS based on the current statuses of the counties.

27. On October 22, 2021, WEG filed a Response to the Motion in Limine, opposing the requested relief.

28. On October 25, 2021, in a prehearing conference, the Hearing Officer granted the Motion in Limine, barring testimony and evidence related to the 8-hour ozone NAAQS and whether any of the proposed permitting actions will “cause or contribute” to a violation of the 8-hour ozone NAAQS.

29. The Hearing began on October 25, 2021, and ended on October 26, 2021.

Summary of Testimony³³

WEG Testimony Regarding Draft Permit No. 5142M8

30. WEG filed Jeremy Nichols’ pre-written testimony, and Mr. Nichols testified at the Hearing.

31. Mr. Nichols’ written testimony raised concerns regarding the legal notice, compliance with state and federal air quality standards, enforceability of startup, shutdown, and maintenance and malfunction (“SSM/M”) emissions limits, the Willow Lake Facility’s compliance and enforcement status, environmental justice, the sulfur content of gas to be combusted, monitoring rates for glycol dehydrators, and the dispersion modeling.

32. At the Hearing, Mr. Nichols testified that all but two of WEG’s issues with the Draft Permit had been resolved by NMED’s written testimony. He further clarified that WEG’s only remaining concerns with the Draft Permit related to SSM/M emissions limits and environmental justice.

³³ This summary excludes the issues covered by the Hearing Officer’s order granting the Motion in Limine. However, Crestwood addressed each of the issues WEG raised in its letters in its pre-filed written testimony.

NMED Testimony Regarding Draft Permit No. 5142M8

33. NMED filed pre-written testimony of Rhonda Romero, Angela Raso, James Nellessen, Kirby Olson, and Urshula Bajracharya regarding the Draft Permit. All of these individuals testified at the Hearing.

34. NMED recommended approval of the Crestwood's Application.

35. In their written and oral testimony, the NMED witnesses testified that NMED complied with Executive Order 2005-056 because NMED issued public notices and conducted outreach for the Application pursuant to its regulations, and NMED completed an EPA EJSCREEN assessment. They testified that modeling submitted with the Application followed NMED's modeling practices and that Crestwood demonstrated the proposed modifications to the Willow Lake Facility would comply with all state and federal air quality standards. The NMED witnesses also testified that the SSM/M emissions limits in the Draft Permit were appropriate and legally enforceable to ensure compliance.

Crestwood Testimony Regarding Draft Permit No. 5142M8

36. Crestwood filed pre-written testimony of Moshe Wolfe, Jonathan Smith, and Adam Erenstein; Mr. Wolfe and Mr. Erenstein testified at the Hearing.

37. In his written and oral testimony, Mr. Wolfe provided an overview of the Willow Lake Facility, the Application and additional equipment Crestwood seeks to add, and the purpose of the requested modifications in the Draft Permit. Mr. Wolfe also testified that the Willow Lake Facility is located in a rural area more than 2.5 miles from the nearest small town.

38. In his written and oral testimony, Mr. Erenstein provided responses to the arguments WEG raised in its comment letters, focusing on the adequacy of the modeling and the demonstrated compliance with all state and federal air quality standards. Mr. Erenstein also testified that the New Mexico law does not limit the quantity of routine and predictable SSM emissions that can be permitted and that the Draft Permit contains legally and practicably enforceable limits for SSM/M emissions. NMED can and will enforce the SSM/M conditions like it enforces any other permit condition.

CRESTWOOD'S PROPOSED CONCLUSIONS OF LAW

Statutory and Regulatory Framework

1. The New Mexico Air Quality Control Act, NMSA § 74-2-5.A(1) requires the Environmental Improvement Board ("EIB") to adopt regulations requiring "a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from [NMED] prior to such construction or modification." NMSA § 74-2-7(A)(1).

2. The EIB adopted NMAC 20.2.72.200.A.(2), which requires "[a]ny person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or

New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification” to obtain a permit.

3. NMAC 20.2.72.203.A governs what an applicant must include in a permit application, requiring the application:

(1) Be filled out on the form(s) furnished by the department;

(2) State the applicant’s name and address, together with the names and addresses of all owners or operators of the source, and the applicant's state of incorporation or principal registration to do business;

(3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed, and estimate maximum potential emissions during malfunction, startup, shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401 NMAC this requirement only applies when the toxic air pollutant is emitted in such a manner that a permit is required under the provisions of 20.2.72.400 NMAC - 20.2.72.499 NMAC;

(4) Contain a regulatory compliance discussion demonstrating compliance with each applicable air quality regulation, ambient air quality standard, prevention of significant deterioration increment, and provision of 20.2.72.400 NMAC - 20.2.72.499 NMAC. The discussion must include an analysis, which may require use of US EPA-approved air dispersion model(s), to (1) demonstrate that emissions from routine operations will not violate any New Mexico or National Ambient Air Quality Standard or prevention of significant deterioration increment, and (2) if required by 20.2.72.400 NMAC - 20.2.72.499 NMAC, estimate ambient concentrations of toxic air pollutants.

(5) Provide a preliminary operational plan defining the measures to be taken to mitigate source emissions during malfunction, startup or shutdown;

(6) Include a topographical map, at least as detailed as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey, showing the exact location and geographical coordinates of the proposed construction, modification or installation of the source;

(7) Include a process flow sheet, including a material balance, and a site diagram of all components and locations of emissions to the atmosphere of the facility which would be involved in routine operations and emissions;

(8) Include a full description, including all calculations of controlled and uncontrolled emissions and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;

(9) Include a description of the equipment or methods proposed by the applicant to be used for emission measurement;

(10) State the maximum and standard operating schedules of the source after completion of construction, modification or installation or after permit revision in terms of which and how many hours per day, days per week, days per month and days per year;

(11) Contain such other specifically identified relevant information as the department may reasonably require;

(12) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any;

(13) Contain payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted;

(14) Contain documentary proof of applicant's public notice, if applicable, as specified in Subsection B of 20.2.72.203 NMAC; and

(15) At the sole discretion of the applicant, contain a request for accelerated review of the application.

4. NMED Universal Application Form 3, Section 14 – Operational Plan to Mitigate Emissions states: “By checking this box and certifying this application the permittee certifies that it has developed an Operational Plan to Mitigate Emissions During Startups, Shutdowns, and Emergencies defining the measures to be taken to mitigate source emissions during startups, shutdowns, and emergencies as required by 20.2.70.300.D.5(f) and (g) NMAC. This plan shall be kept on site to be made available to the Department upon request. This plan should not be submitted with this application.” AR230.

5. Pursuant to NMSA § 74-2-7.C, NMED may deny an application for a construction permit modification if it appears that the construction: “(a) will not meet applicable standards, rules or requirements of the Air Quality Control Act or the federal act; (b) will cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or (c) will violate any other provision of the Air Quality Control Act or the federal act.”

6. NMAC 20.2.72.208 further provides that a permit be denied if, “considering emissions after controls:”

A. It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the Air Quality Control Act;

B. The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board;

C. For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

D. The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

E. The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

F. Any provision of the Air Quality Control Act will be violated;

G. It appears that the construction of the new source will not be completed within a reasonable time; or

H. The department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC.

7. The only provisions of NMAC 20.2.72.208 relevant to this Crestwood proceeding are (A), (B), (C), and (F). NMAC 20.2.72.208(D) and (E) provide grounds for denial that only apply to sources categorized as “major” for the purpose of the PSD program. The PSD program applies to major sources or major modifications in attainment areas. Eddy County is an attainment area. Further, the Willow Lake Facility does not, and will not, emit more than 250 tons per year of any pollutant regulated under the NAAQS or NMAAQs and therefore is a “minor” source for the purposes of the PSD program. AR221. Because NMAC 20.2.72.D and E do not apply to minor PSD sources, those provisions cannot serve as grounds to deny issuance of Crestwood’s Draft Permit.

8. NMED issued Implementation Guidance for Permitting SSM Emissions and Excess Emissions (June 2012), which states, under New Mexico law: “There is no limit on the quantity of SSM emissions that can be permitted, provided they are routine and predictable, and included in applicable air dispersion modeling that demonstrates compliance with State and Federal ambient air quality standards.” Exhibit Crestwood-9 at 2. The Guidance also states: “Permitting SSM and/or malfunctions does not relieve a permittee from the requirement to minimize SSM and/or malfunction emissions in accordance with 20.2.7.14 and 20.2.7.109 NMAC. Applicants are also required to submit a preliminary operational plan defining the measures to be taken to mitigate source emissions during [SSM] as part of a permit application.” *Id.*

9. Prior to making any modifications to the Willow Lake Facility, Crestwood must obtain a permit from NMED pursuant to NMSA § 74-2-7.A.(1) and NMAC 20.2.72.

10. The Secretary of Environment has jurisdiction over the subject matter of Crestwood’s Application and the parties to this proceeding, and is authorized by the Air Quality Control Act to issue or deny air quality construction permits based upon the information submitted in a permit application and relevant information received during a public hearing. NMSA §§ 74-2-5, 74-2-7.

Standard of Decision

11. As the applicant, Crestwood has the burden to prove that a permit should be issued and the burden does not shift. NMAC 20.1.4.400.A.(1).
12. “The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed.” NMAC 20.1.4.400.A.(1).
13. “Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” NMAC 20.1.4.400.A.(1). Therefore, WEG has burden to affirmatively prove that a challenged permit condition is “inadequate, improper, or invalid.”
14. “The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.” NMAC 20.1.4.400.A.(3).

Decision on Crestwood’s Permit Application

15. Crestwood’s Application complies with all applicable requirements of NMAC 20.2.72.203 and all applicable requirements of the Clean Air Act, New Mexico Air Quality Control Act, and applicable NMED regulations for issuance of a modification to a construction permit.
16. The conditions proposed by NMED satisfy the requirements of NMSA § 74-2-7.D and NMAC 20.2.72.210.B.
17. NMED complied with the requirements of NMAC 20.1.4.100 and 20.2.72.206 in conducting the Hearing.
18. Crestwood complied with all requirements of the Air Quality Control Act, and applicable NMED regulations in filing its Application.
19. Proper notice for the public hearing on Crestwood’s Application was given as required by the Air Quality Control Act, and applicable NMED regulations.
20. NMED fully complied with Executive Order 2005-056 – Environmental Justice by conducting public outreach and the Hearing in English and Spanish and by applying the EPA EJSCREEN tool during its analysis of Crestwood’s Application.
21. Executive Order 2005-056 does not “create a private right of action to enforce any provision of [the] Order” Accordingly, WEG cannot challenge the issuance of Crestwood’s permit on these grounds, and even if they could, WEG provided no evidence to support its assertion that emissions from the Facility will impact any community.
22. Although not legally required to do so because the Facility is a PSD minor source, Crestwood demonstrated that air emissions at the Willow Lake Facility do not and will not cause or contribute to exceedances of NAAQS, NMAAQs, or PSD Increments.

23. The permit conditions NMED proposed in the Draft Permit are necessary and appropriate to protect human health and the environment to ensure compliance with the Air Quality Control Act and all applicable NMED regulations
24. Included in those conditions are legally and practicably enforceable emission limits for SSM/M that are consistent with NMED guidance on SSM/M.
25. WEG did not present any evidence at the Hearing to support any basis for denying a permit under NMSA § 74-2-7.C or NMAC 20.2.72.208.
26. The Application, the Hearing, and the administrative record reveal no basis under the Air Quality Control Act or applicable NMED regulations or Executive Order 2005-056 upon which to deny the permit to Crestwood.
27. WEG did not meet its burden to demonstrate that the Draft Permit should be denied under any of the grounds provided in NMAC 20.2.72.208.
28. Of the two issues WEG did not concede at the Hearing, WEG did not provide any testimony or evidence that it is entitled to relief. Further, WEG did not provide any testimony or evidence that it is entitled to broader relief regarding any of its claims.
29. Issuance of an air quality construction permit to Crestwood, as requested in the Application and with the operational limits, controls, requirements, and emission levels in the Draft Permit, is in conformance with the Air Quality Control Act and applicable regulations and must be done immediately.